

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE DEPARTMENT OF CORRECTIONS

In the Matter of the Correctional Fees
for Seraphina Richards, fka Sara
Staudacher

**FINDINGS OF FACT, CONCLUSIONS
AND ORDER**

This matter was heard by Administrative Law Judge (ALJ) Richard C. Luis on October 31, 2007. The matter was conducted by means of a telephone conference. The ALJ presided at his office in St. Paul, counsel for the Department of Corrections (Department) appeared at her office in St. Paul, and Seraphina Richards, fka Sara Staudacher, appeared by telephone from her residence. Krista J. Guinn, Associate Legal Counsel, Minnesota Department of Corrections, 1450 Energy Park Drive, Suite 200, St. Paul, Minnesota 55108, appeared on behalf of the Department of Corrections. Seraphina Richards, fka Sara Staudacher, PO Box 451, Bigfork, Minnesota 56628, appeared on her own behalf.¹ The hearing record closed on December 19, 2007.

STATEMENT OF ISSUE

Whether the balance of supervision fees owed to the Department by Ms. Richards as of July 20, 2007 may be collected through the Minnesota Revenue Recapture Program?

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. On November 16, 1990, Ms. Richards was committed to the Minnesota Women's Correctional Facility at Shakopee for a term of 300 months (25 years). She received 410 days credit for time already served, continuous from October 3, 1989. Her sentence will expire on October 2, 2014.

¹ Ms. Richards reported to the ALJ that her name has been changed legally to Seraphina Richards from Sara Staudacher, subsequent to the commencement of this action by the Department. Throughout the balance of this Order, she will be referred to by her current legal name, Seraphina Richards, or Ms. Richards.

2. On July 20, 2006, Ms. Richards was released from the Shakopee facility. She was placed on supervised release, and will remain in the custody of the Department of Corrections, on supervised release, until her sentence expires in 2014. In accordance with Minnesota law,² Ms. Richards received a “good time” reduction in the duration of her term of imprisonment of one day for each two days of confinement at the Shakopee facility. In this instance, the supervised release period that accrued due to the accumulation of good time while Ms. Richards was at the Shakopee facility constitutes one-third of the 25-year duration of her sentence.³

3. Upon the commencement of her supervised release, Ms. Richards was notified in writing that, pursuant to legislation passed in 1999 that allows the Department of Corrections to impose supervision fees on offenders under the supervision of Department agents, an annual fee of \$120 was imposed on each adult offender. Ms. Richards was given the option to pay the supervision fees on a monthly basis at the rate of \$10 per month, and was informed further:

Please be aware that even though the imposition of this fee is not a court mandated condition of your probation agreement, it is still a legal obligation and it is expected that you will make every attempt to pay it. If you fail to pay the fees and remain current with your payments, you will not advance to the next phase of your program and you will not be considered for early discharge from your probation. Fees not paid at the end of a year, or at the end of your sentence, will be submitted to the Department of Revenue for revenue recapture.⁴

4. Ms. Richards has paid no supervision fees since being placed on supervised release. On July 31, 2007, Ms. Richards was informed, by letter from Corrections Agent Steve Olson, that she owed fees for supervision in the amount of \$120 from July 20, 2006 to July 20, 2007. Mr. Olson’s letter informed Ms. Richards that the balance of fees owed as of July 20, 2007 has been submitted to the State of Minnesota Revenue Recapture Program. The letter informed her further that the Department was requesting the State of Minnesota to forward any refunds to which she would be entitled to the Minnesota Department of Corrections, including, but not limited to individual income tax refunds, individual property tax credits or refunds, lottery winnings over \$600 and political campaign refunds. Ms. Richards was informed also that if she wished to contest the claim represented in Mr. Olson’s letter she had to notify the Bemidji Office of the Minnesota Department of Corrections in writing within 45 days.⁵

5. On or about September 13, 2007, Ms. Richards filed a written appeal to contest the claim made by the Department for fees owed to it through

² See Minn. Stat. §§ 244.01-.05.

³ Minn. Stat. § 244.04, subd. 1.

⁴ Ex. 4.

⁵ Ex. 5.

the State of Minnesota Revenue Recapture Program. This hearing process followed.⁶

Based on the Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. The ALJ has jurisdiction in this matter pursuant to Minn. Stat. §§ 241.272, 270A.08 and 270A.09.

2. Notice of the hearing was proper and the Department has fulfilled all procedural requirements.

3. Seraphina Richards became liable for supervision fees due to the Department for the period of one year following her release from the Minnesota Women's Correctional Facility at Shakopee, the period beginning July 20, 2006 and ending July 20, 2007. She has not paid those supervision fees in the total amount of \$120 for the period noted, and is in debt to the Department for that amount.

4. The amount of \$120 owing by Ms. Richards to the Department for supervised release during the year in question is a "correctional fee" within the meaning of Minn. Stat. § 241.272. Under Minn. Stat. § 241.272, subd. 3(a), the Commissioner of Corrections may impose and collect fees from individuals on supervised release at any time while the offender is under sentence or after the sentence has been discharged. Under subdivision 3(b) of that statute, the Commissioner may use any available civil means of debt collection to collect a correctional fee.

5. The Minnesota Revenue Recapture Act authorizes State agencies such as the Department of Corrections to collect debts owed to it by filing a claim with the Minnesota Department of Revenue. The Department of Revenue may collect amounts due to the Department of Corrections by means of setting off the amounts of such debts from refunds due to debtors such as Ms. Richards. Refunds include individual income tax refunds, political contribution refunds, property tax credits or refunds, and lottery prizes of \$600 or more.⁷

6. It is appropriate for the Department of Revenue to collect the correctional fee of \$120 owed by Seraphina Richards by means of revenue recapture in accordance with Minn. Stat. Chapter 270A.

Based on the Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

⁶ Ex. 6.

⁷ See Minn. Stat. §§ 270A.03, subd. 7 and 349A.08, subd. 8.

ORDER

IT IS ORDERED that Seraphina Richards pay to the Minnesota Department of Corrections the amount of \$120, by money order or cashier's check payable to the Minnesota Department of Corrections, for the correctional fee due to the Department of Corrections for supervised release supervision for the period from July 20, 2006 to July 20, 2007.

IN THE ALTERNATIVE the Department of Corrections may proceed with its request to the Department of Revenue to collect the \$120 due from Ms. Richards for supervised release fees for the period from July 20, 2006 to July 20, 2007, by means of the State of Minnesota Revenue Recapture Program.

Dated: January 16, 2008

/s/ Richard C. Luis

RICHARD C. LUIS

Administrative Law Judge

Reported: Taped
No transcript prepared

NOTICE

This Order is the final decision in this matter pursuant to Minn. Stat. § 270A.09, subd. 3. Any person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. §§ 14.63 to 14.68.

MEMORANDUM

In her letter requesting a hearing, in oral argument made at the hearing, and in her written submission following the hearing, Ms. Richards has been consistent in the presentation of her arguments. They are:

1. Because the laws allowing the imposition of correctional fees were not adopted until 1999, they clearly apply to crimes committed after the creation of that law, and trying to impose correctional fees on her for her period of supervised release violates Minnesota law and constitutional provisions against *ex post facto* provisions of the Constitution;
2. Since revenue recapture laws did not exist at the time Ms. Richards committed the crime for which she was sentenced, implementing a revenue recapture collection scheme to collect any debts she owes is also unconstitutional because of violation of the *ex post facto* doctrine; and
3. The last one-third of Ms. Richards' sentence, which began upon her release from the Shakopee facility, is "good time" to which supervised release should not apply. Therefore, since she should not have been placed on supervised release, Ms. Richards argues she should not be obligated to pay for the fees related to any supervised release.

In her letter/brief filed after the hearing, Ms. Richards added the argument that she was indigent and unable to pay correctional fees attributable to her supervised release.

The ALJ is unable to accept the arguments advanced by Seraphina Richards. It is well-settled that statutes that impose fees for correctional services are not *ex post facto* laws because they do not impose additional punishment for past criminal acts, and they are not implemented for punitive purposes. Rather, they serve an administrative purpose, which is to defray a state's costs for incarceration or supervision. In this case, Ms. Richards' sentence has not been increased by imposition of the supervision fees – her sentence is still for a period of 300 months (25 years). In order for a statute to violate the *ex post facto* clause of the United States Constitution it must increase retroactively the punishment for a criminal act.⁸

⁸ *Collins v. Youngblood*, 497 U.S. 37, 43 (1990); *Taylor v. Rhode Island*, 101 F.3d 780, 783-84 (1st Cir. 1996), *cert. denied* 521 U.S. 1104 (1987); *Walters v. Kautzky*, 187 F.3d 645 (8th Cir. 1999).

The *ex post facto* clause applies only to statutes that are penal in nature.⁹ If the new statute is only procedural and does not increase the sentence imposed as criminal punishment, or change the elements of the offense, or change the ultimate facts necessary to establish guilt, the *ex post facto* clause has not been violated.¹⁰ Since the statute authorizing supervision fees is neither penal nor been applied in this case retrospectively to events occurring prior to its enactment, the *ex post facto* doctrine does not apply here.

Ms. Richards' argument that the revenue recapture program cannot be applied as a means of collecting the debt is misplaced. She argues that revenue recapture laws were not in place at the time the crime was committed in 1989. It is noted that the Minnesota Revenue Recapture Act was first passed in 1980, so that argument is without merit.¹¹

The argument that supervised release should not have been imposed on Ms. Richards because she was serving the "good time" portion of her sentence since the period of supervised release began on July 20, 2006, is also misplaced. She argues that supervised release can only be imposed on her during the first two-thirds of her sentence. Under Minn. Stat. § 244.01, subd. 5, "good time" is the period of time by which an inmate's term of imprisonment is reduced. A "term of imprisonment" is defined by subdivision 8 of that statute as the period of time for which an inmate is committed to the custody of the Commissioner of Corrections minus earned good time. These definitions, read together, make it clear that although Ms. Richards' "term of imprisonment" may have ended, she is still "committed to the custody of the Commissioner of Corrections" for the balance of her 25 year sentence, which does not expire until 2014. As noted at Minn. Stat. § 244.05, subd. 1, "every inmate shall serve a supervised release term upon completion of the inmate's term of imprisonment as reduced by any good time earned by the inmate" That subdivision clarifies further that ". . . the supervised release term shall be equal to the period of good time the inmate has earned, and shall not exceed the length of time remaining in the inmate's sentence." The year from July 20, 2006 through July 20, 2007, for which the Department now seeks collection of the debt from Ms. Richards for fees associated with her supervised release, was a year within the "length of time remaining in the inmate's sentence" within the meaning of Minn. Stat. § 244.05, subd. 1. It is clear that the year in question was also a period of "good time" which occurred after Ms. Richards' term of imprisonment. It is apparent that the statutes contemplate that supervised release can occur during the "good time" portion of an inmate's custody, as is the situation in this case.

In her brief, Ms. Richards poses the argument that she should not be liable for any debt related to correctional fees because she is indigent. Minn. Stat. § 241.272, subd. 4, provides for exemption from correctional fees, whereby

⁹ *Collins v. Youngblood*, 497 U.S. 37, 42 (1990) (citing *Beazell v. Ohio*, 269 U.S. 167, 169-170 (1925)).

¹⁰ *Murray v. Cisar*, 594 N.W.2d 918, 921 (Minn. App. 1999).

¹¹ Minn. Laws 1980, ch. 607, art. 12, §§ 1-12.

the Commissioner of Corrections may waive payment of fees if the Commissioner determines that the offender does not have the ability to pay the fee, the prospects for payment are poor or there are extenuating circumstances justifying waiver of the fee. It is noted also that instead of waiving the fee the Commissioner may require the offender to perform community work service as a means of paying the fee. In this instance, the Commissioner of Corrections has not waived the imposition of the correctional fee. The Department of Corrections' Policy 201.013 (supervision fees)¹² provides, at part D, a detailed waiver provision, whereby any request of that nature can be considered. Ms. Richards has not applied for such a waiver, and it is beyond the jurisdiction of this proceeding for the ALJ to make such a determination.

It is also beyond the jurisdiction of this proceeding to address Ms. Richards' argument, made in her brief, that she no longer requires supervision, for various reasons noted supporting her rehabilitation. Those arguments are immaterial to the issue of whether it is appropriate to use revenue recapture to collect the debt owed for the year ending July 20, 2007, because it is not disputed that she was under Department supervision then.

In her appeal letter, Ms. Richards argued that placing her on intensive supervised release (ISR) after she left the Shakopee facility was improper because the statute governing ISR was not enacted until after she was imprisoned. She maintains that assigning her to ISR violated the prohibition against *ex post facto* legislation. This argument is also rejected because it is a matter of agency discretion whether she was on intensive or regular supervised release,¹³ the debt owed by Ms. Richards is the same no matter what was the character of her supervised release time, and the nature of her release is not material to the issue in this case. The *ex post facto* clauses of the U.S. and Minnesota Constitutions are not implicated because placing an offender on ISR is an administrative act that does not increase the length of the offender's sentence or impose any other additional punishment for the crime.

R. C. L.

¹² Ex. 3.

¹³ See Minn. Stat. §§ 244.05, subd. 6 and 244.14, subd. 1.